

HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.11474 of 2007

-
Date: 3.7.2007

-
Between:
Union of India rep. by its
General Manager, Calcutta and others.

....

Petitioners

And

G. Neelaveni
Respondent

...

HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO. 11474 OF 2007

ORDER: (per Smt. Justice T. Meena Kumari)

The South Eastern Railways has filed the present writ petition aggrieved by the order of the Central Administrative Tribunal, Hyderabad Bench made in O.A. No. 709 of 2005, dated 15.12.2006.

The brief facts of the case are that the respondent herein filed O.A. No. 709 of 2005 before the Tribunal seeking a direction to the respondents to provide appointment to the applicant on compassionate grounds in any suitable post. According to the respondent, her husband late Sri G. Satyam was appointed as Points man in Baikunth. While so, when he was sent to refresher course, he developed serious mental imbalance and was sent to Garden Reach Hospital, Calcutta. While undergoing treatment, he left Baikunth in the year 1983 without any information. Thereafter the whereabouts of her husband could not be traced. Subsequently, the respondent made an application to the Officer-in-charge, Thana, Tilda, Raipur District, Madhya Pradesh and to the Officer-in-charge of Thana Denkada, Vizianagaram District, Andhra Pradesh for providing compassionate appointment. The grievance of the respondent was that though her husband has been missing for the last 22 years and though she submitted several representations to the authorities in that regard, the authorities have not taken any action. She, therefore, filed the O.A. before the Tribunal seeking directions to the authorities for providing compassionate appointment. The authorities resisted the said O.A. by filing a counter wherein they stated that even though the husband of the respondent was missing from 1983, the respondent has submitted the application for the first time seeking compassionate appointment

only in the year 1997. The Department also informed the respondent that payment of settlement of dues of her husband is under process treating the case as that of a missing person.

The Tribunal, by the order impugned in this writ petition, disposed of the said O.A. with a direction to the Department to consider the case of the respondent for compassionate appointment provided there is any such rule available for considering the belated application for compassionate appointment and pass appropriate order and communicate the same to the applicant within a period of three months from the date of receipt of the said order. Aggrieved by the same, the Department filed the present writ petition.

Sri R.S. Murthy, learned Standing Counsel for the Department would contend that the Tribunal failed to appreciate and gravely erred in understanding the grievance of the respondent and misdirected itself in granting the relief of grant of compassionate appointment as a case falling under Railway board Circular No. 197/1986 read with letters dated 5.12.1997 and 30.12.1997 and the said Circular has no application to the facts of the present case. He further submits that G. Satyam was unauthorisedly absent and absconding without any permission or leave application duly supported by a medical certificate from a Railway doctor and his case was one of abandonment of service and his name was accordingly struck off from the rolls. Further, if a railway employee is unauthorisedly absent beyond the period of admissible leave, he is liable to be removed as a measure of punishment and the family of such an employee is not entitled to family pension and pensionary benefits. In the instant case, since there is abandonment of service and unauthorized absence by the railway employee, the respondent cannot claim any family pension under Rule 40 of Railway Service Pension Rules, 1993. He, therefore, submits that the Tribunal erred in directing the Department to consider the case of the respondent for compassionate appointment. He, therefore, prayed that the writ petition be allowed and the order

impugned in this writ petition be set aside.

Sri A. Srinivasa Sarma, learned counsel for the respondent, on the other hand, supported the impugned order and prayed that the writ petition be dismissed.

Admittedly, there is no dispute about the fact that one G. Satyam was appointed as a Points man at Baikunth on 24.9.1967. There is also no dispute about the fact that when the said G. Satyam had become mentally imbalanced and had become incapable of discharging the duties as points man, he was advised to be referred for medical examination. According to the Department, the said employee or the respondent never approached the Department for any help and assistance nor there was any application made by Sri Satyam or his wife, in the absence of which, his case was treated as one of abandonment of service for all purposes. It is an admitted fact that the wife or family members of the said Satyam had not evinced any interest for almost fifteen years and in such circumstances, it was treated as abandoned service and his name was also struck off from the rolls. Further, on a perusal of the reply affidavit filed by the Department before the Tribunal and which is annexed as material papers to the present writ petition, it is seen that the respondent in the application submitted by her to the Department on 10.7.1997 has stated that her husband, namely, G. Sitaram was appointed on 24.9.1967 in Operating Department at Baikunth as a points man and he was found missing since 1983 and his whereabouts were not known. The department, thereafter, informed the respondent that as per the records available with them Sri G. Satyam, S/o. G. Ramulu alone was working as PMB/BKTH in the year 1982 and thus she was advised to ensure her husband's name and submit necessary certificates in support of her claim. The respondent, then addressed a letter dated 5.12.1997 stating that her husband's name is G. Satyam, S/o. G. Ramulu and submitted some documents along with the said letter. The respondent also enclosed another letter addressed to

DRMR where again she stated her husband's name as G. Sitaram. Further, in the Study Certificate of the respondent, which is enclosed to the said letter the respondent mentioned her date of birth as 15.7.1958 and if that be so, she would be only nine years old at the time of missing of her husband. Admittedly, the respondent made application to the Department for the first time in the year 1997, i.e., nearly after a period of 15 years after her husband was found missing, that too with a wrong name and it is highly improbable to believe how the respondent could forget her own husband's name. That apart the question whether the respondent's husband is G. Satyam or G. Sitaram, is purely a question of fact, which cannot be decided either by the Tribunal in the O.A. or by this Court in this writ petition and the same has to be adjudicated by a competent civil Court. In the circumstances, we are of the opinion that the Tribunal, by the order impugned in this writ petition, erred in giving a direction to the Department to consider the case of the respondent for providing compassionate appointment and the same is liable to be set aside.

Accordingly, this writ petition is allowed and the impugned order of the Tribunal dated 15.12.2006 is set aside. No costs.

T. MEENA KUMARI,J

Date: 3rd July, 2007

G. CHANDRAIAH,J

pnb